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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,147	04/08/2004	Linda Valerie Thomas	14966.0004	6681

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STEPTOE & JOHNSON LLP
Attn: Docket Administrator - Box USPTO
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Washington, DC 20036

EXAMINER

PADEN, CAROLYN A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,147

Applicant(s)

THOMAS ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 17-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11-09-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claims 17-32 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Groups II and III, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 30, 2005.

Applicant's election of Group I in the reply filed on November 30, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 9, 10, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ang (EP 1,157,618).

Ang discloses an anti-caking, anti-mycotic food ingredient that is encapsulated and that contains natamycin. In example 1 the product is made from combining powdered cellulose (96% of the composition) with lecithin encapsulating agent, natamycin, lactose and about 3% water. Natamycin is suspended in water with lactose and atomized into a blender with cellulose and lecithin. In this case cellulose appears to be the shell.

The ingredient is used by dissolving an appropriate amount of it and spraying the resulting solution onto cheese. The claims appear to differ from Ang in the recitation of the use of microcapsules. But no unobvious or unexpected difference is seen from the atomized preparation of Ang and the microcapsules of the claims. Assuming *arguendo* that applicant proves that Ang's atomized preparation and microcapsules have a different size, no unobvious or unexpected result is seen to flow from this difference because both compositions would still be antimycotic agents in spite of their particle size.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over 21 CFR 172.155 in view of Morgan.

CFR describes where natamycin is permitted in foods. The passage restricts the use of natamycin to the surface of cheese. It is very well known in the art that fat and wax are typically used to coat quality cheese product in order to protect the cheese from the ordinary environment. The claims appear to differ in the recitation of the use of microcapsules containing natamycin. Morgan teaches making microcapsules from oil in water emulsion by spray drying the emulsion. Oil and wax are contemplated as shells from this process. The cores of the microcapsules are aqueous and may contain antimycotic agents (column 5, last line). It would have been obvious to one of ordinary skill in the art to utilize

natamycin in the microcapsule of Morgan as one of a host of permitted anti-microbial agents for use in cheese.


Claims 1, 6 & 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thies (Micro encapsulation) in view of Stark (Natamycin).

Thies discloses all of the ways in which food, pharmaceuticals and biotechnological ingredients may be microencapsulated. Table 1 shows the shell materials. The abstract shows the range of ingredients for use in microcapsules. The claims appear to differ from Thies in the inclusion of natamycin as one of the many applications for microcapsules. Stark teaches Natamycin. The physical properties of natamycin are shown on page 180. It would have been obvious to one of ordinary skill in the art to supplement any or all of the many biotechnological applications of microcapsules with natamycin in order to reduce the extent of fungus and mold growth in the product. It is appreciated that the particular amount of natamycin set forth in claims 14-16 is not shown but to prepare a super concentrated solution of natamycin for dilution would have been an obvious way to simplify the preparation of a usable amount of compound.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 1-30-06
PRIMARY EXAMINER 1761